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SIDNEY L. STRICKLAND, JR.
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January 3, 2006

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington DC 20423-0001

215481

**Re: STB Docket No. AB-6 (Sub-No. 430X) BNSF Railway Company
Abandonment Exemption in Oklahoma City, OK**

**STB Docket No. AB-1040X, Stillwater Central Railroad, Inc.
Discontinuance of Service Exemption in Oklahoma City, OK**

215482

Dear Secretary Williams:

Enclosed for filing in the referenced dockets are the original and ten copies of a Motion to Compel Responses to Discovery Requests.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sidney L. Strickland, Jr.

SLS/eww
Enc.

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Office of Proceedings

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. AB-6 (SUB-NO. 430X)

BNSF RAILWAY COMPANY
-- ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK

STB DOCKET NO. AB-1040X

STILLWATER CENTRAL RAILROAD, INC.
-- ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK

MOTION TO COMPEL RESPONSES
TO DISCOVERY REQUESTS

EXPEDITED ACTION REQUESTED

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Part of
Public Record

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Of Counsel
Ball Janik LLP
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1455 F Street, N.W.
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(202) 638-3307

Attorney for:
STILLWATER CENTRAL
RAILROAD, INC.

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(202) 295-4672

Attorney for:
BNSF RAILWAY COMPANY

Dated: January 3, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB-NO. 430X)

BNSF RAILWAY COMPANY
-- ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK

STB DOCKET NO. AB-1040X

STILLWATER CENTRAL RAILROAD, INC.
-- ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK

MOTION TO COMPEL RESPONSES
TO DISCOVERY REQUESTS

EXPEDITED ACTION REQUESTED

Pursuant to 49 C.F.R. § 1114.31, BNSF Railway Company ("BNSF") and Stillwater Central Railroad, Inc. ("SLWC") (collectively, "Applicants"), hereby move the Surface Transportation Board ("Board") to issue an order compelling responses to certain interrogatories and the production of certain documents by Bio-Energy Wellness Center and North American Transportation Institute ("Petitioners"). These discovery requests were included in Applicants' First Set of Interrogatories, Document Requests and Requests for Admissions served on December 8, 2005.

BACKGROUND

On September 23, 2005, Applicants filed a Verified Notice of Exemption under 49 CFR 1152.50 for BNSF to abandon and SLWC to discontinue service over a specified rail line ("Line").

On November 9, 2005, Petitioners filed a "Petition of to Have Notice Declared Null and Void", alleging the Line has been used to handle local traffic within the past two years.

The Board served a decision on November 10, 2005, in this proceeding, that imposed environmental conditions with respect to the abandonment and discontinuance of service on the Line. The exemption became effective on November 12, 2005.

On November 21, 2005, Petitioners filed a Motion for a Protective Order, which was granted by the Board on November 23, 2005.

On December 6, 2005, Petitioners' First Set of Interrogatories and Document Production Requests were served on Applicants. On December 8, 2005, Applicants served Petitioners with Applicants' First Set of Interrogatories, Document Requests and Requests for Admissions. On December 15, 2005, Petitioners served their Response to Applicants' Initial Discovery Requests (Attached).

Subsequently, on December 21, 2005, BNSF and SWLC separately served a Response to Petitioners' First Set of Interrogatories and Document Production Requests.

On December 22, 2005, Petitioners served their Supplemental Response to Applicants' Initial Discovery Requests, identifying purported shippers on the Line during the time period at issue.

ARGUMENTS

The Board's discovery rules provide that a party "may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding...." 49 C.F.R. § 1114.21(a). The various discovery tools available to Applicants include depositions of any witness, including a party, interrogatories, document requests and requests for admissions, all of which may be served by a party upon any other party, and, in the matter of a deposition, via notification of all parties to the proceeding and the person sought to be deposed.

Applicants have submitted to Petitioners seven interrogatories, nine document requests and four requests for admissions. Petitioners have either not responded or objected to nearly all of Applicants' discovery requests. Petitioners should be directed to respond to the discovery requested, as noted further below. The information sought by Applicants is directly relevant to the issues raised by Petitioners in these proceedings.

The specific basis for the present Motion to Compel with respect to each interrogatory and request for documents are as follows:

APPLICANTS' INTERROGATORIES

Interrogatory No. 1. On pages 2 of the Petition and Motion, You state that the Line "has been used to handle local traffic within the past two years." Please define "local traffic" as used in the referenced sentence and identify all local traffic that was handled on the Line between September 24, 2003 and September 23, 2005.

Petitioners' Answer:

Response: Local traffic is that traffic which was handled to or from industries, shippers and/or consignees situated on, or accessed via the Line. Applicants are in the best position to know which shipments were picked up by them, delivered by them or

were the subject of intraplant switching, but to date, Applicants have not responded to Petitioners' discovery requests seeking that information. Nor have counsel for the Applicants signed and returned the Highly Confidential undertakings permitting Petitioners to make a greater response.

The Board should require Petitioners to identify any local traffic that moved on the Line during the relevant time period. Petitioners suggest that they need not answer because "Applicants are in the best position to know which shipments were picked up by them, delivered by them or were the subject of intraplant switching." Applicants have triple-checked their records and have found no shippers that have shipped local traffic over the Line between September 24, 2003, and September 23, 2005. Given Petitioners' definition of "local traffic" as including traffic handled via the Line, i.e., overhead traffic, Petitioners should be required to identify the traffic they refer to in their filings with the Board so that Applicants can determine whether it is local or overhead.

Interrogatory No. 3. For each shipper identified in response to Interrogatory No. 2, identify all communications between Petitioners (including, without limitation, their counsel, agents, representatives, or consultants) "separately or jointly" and these shippers (or their counsel, agents, representatives or consultants) prior to the filing of the Motion and explain why these shippers are concerned about retribution and are unwilling to make their identities public.

Response:

No shipper was identified.

The Board should require Petitioners to respond more fully. As noted, counsel for Applicants have signed and returned the Highly Confidential undertakings enabling Petitioners to fully respond. Petitioners have waived any objection they may otherwise have had regarding this interrogatory. In their December 23, 2005, filing with the Board,

Petitioners specifically stated that they have had conversations with personnel of the named companies. Having acknowledged the existence of communications, Petitioners should be required to respond to identify such communications as requested in Interrogatory No. 3.

Interrogatory No. 6. Identify any participation Petitioners (or the counsel, agents, representatives, or consultants) have had "separately or jointly" with the I-40 Relocation, including any meetings attended and testimony or documents submitted to a local, State or Federal agency or authority in support of, or in opposition to, the I-40 Relocation.

Response:

Petitioners decline to answer the interrogatory on the grounds that it is irrelevant to the issue before the Board, namely, whether Applicants' Verified Notice of Exemption contained false or misleading information, nor would it lead to the disclosure of relevant and, hence, admissible materials.

The Board should require Petitioners to respond. Answers to these questions address: (1) the veracity of Petitioners' claims that the present Notice is false and should be null and void; (2) the motives of Petitioners in seeking to delay the present proceedings; and (3) the basis as to why Petitioners are stonewalling their submission of evidence that permits Applicants to bring closure to the outstanding issue as to whether the Notice is false and should be null and void.

Interrogatory No. 7. State with specificity what information in BNSF's Notice of Exemption is alleged to be fraudulent and/or misleading and the basis for such claim, including a description of all information known to exist supporting, negating, or relating to Petitioners' claim.

Response:

Applicants are in the best position to know which shipments were picked up by

them or were the subject of intraplant switching at the industries, shippers and/or consignees situated on, or accessed via the Line. Applicants, however, as yet have not responded to Petitioners' discovery requests seeking that information. Nor have counsel for Applicants signed and returned the Highly Confidential undertaking permitting Petitioners to make a greater response.

The Board should require Petitioners to respond more fully. As noted, counsel for Applicants have signed and returned the Highly Confidential undertakings enabling Petitioners to make a full response. In addition, although the Petitioners have given the names of alleged shippers, they have designated their names as Highly Confidential, thus making it impossible for counsel to discuss with any employees of BNSF or SLWC the location of such shippers, whether they shipped any traffic during the relevant time period and whether that traffic was local or overhead. Consequently, Petitioners should be compelled to produce detailed information as to the nature of any traffic they claim moved on the Line.

DOCUMENT REQUESTS

Document Request No. 1. Produce all documents that were identified in response to Interrogatory No. 3.

Response:

There was none.

The Board should require Petitioners to respond in light of their December 23rd filing with the Board and Petitioners response to Admission No. 4. In the December 23rd filing, Petitioners claim to have had contact with the alleged shippers. In response to Admission No. 4, Petitioner admitted "that Petitioners have records evidencing the fact of any freight rail shipments made by "BNSF, SLWC, or any other carrier from or to Petitioners' or any peron's facilities which originated or terminated on the Line between

September 24, 2003, and September 23, 2005.” In response to Document Request No. 1, Petitioners claim they have no documentary evidence as to traffic moving on the Line..

Document Request No. 2. Produce all documents that were used to reach the conclusions identified in Interrogatory Nos. 1 and 2.

Response:

There was none.

The Board should require Petitioners to respond. As noted, counsel for Applicants have signed and returned the Highly Confidential undertakings permitting Petitioners to make a response.

Document Request No. 3. Produce all documents Petitioners have in their possession custody or control concerning the I-40 Relocation, including without limitation, any documents submitted to any local, State or Federal agency or authority in connection with the I-40 Relocation.

Response:

Petitioners decline to respond to the document production request on the grounds that it is irrelevant to the issue before the Board, namely, whether Applicants’ Verified Notice of Exemption contained false or misleading information, nor would it lead to the disclosure of relevant and, hence, admissible materials.

The Board should require Petitioners to respond. The requested documents are likely to lead to relevant materials that address: (1) the veracity of Petitioners’ claims that the present Notice is false and should be null and void; (2) the motives of Petitioners in seeking to delay the present proceedings; and (3) the basis as to why Petitioners are stonewalling their submission of evidence that permits Applicants to bring closure to the outstanding issue as to whether the Notice is false and should be null and void

Document Request No. 6. Please produce all information in your possession,

custody, or control, which supports or negates Petitioners' allegations that: (1) BNSF's Notice of Exemption in this proceeding contained fraudulent or misleading information; and/or (2) the Line has been used for Local traffic (defined for purposes of this request No 6, as traffic which either originates or terminates on the line) in the preceding two years prior to BNSF's filing of its Notice of Exemption.

Response:

See response to Interrogatories Nos. 1 and 7.

The Board should require Petitioners to respond.

Petitioners suggest that they need not answer because "Applicants are in the best position to know which shipments were picked up by them, delivered by them or were the subject of intraplant switching." Applicants have triple-checked their records and have found no shippers that have shipped local traffic over the Line between September 24, 2003, and September 23, 2005. Applicants' Counsel have signed and returned the Highly Confidential undertakings permitting Petitioners to make a response.

Finally, although the Petitioners have given the names of alleged shippers, they have designated their names as Highly Confidential, thus making it impossible to discuss with employees of BNSF and SLWC the traffic, if any, such shippers moved over the Line during the relevant time period.

Document Request No. 7. Please produce copies of all correspondence, records, and electronic data in Petitioners' possession, custody, or control, pertaining to rail freight shipments moving from, to or via the Rail Line in the past five years.

Response:

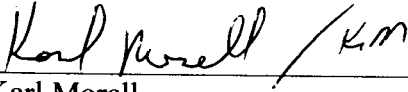
Unlike Applicants, Petitioners have none.

The Board should require Petitioners to respond in light of their December 23rd filing with the Board and Petitioners response to Admission No. 4. In the December 23rd filing, Petitioners claim to have had contact with the alleged shippers and that these shippers identified traffic movements to Petitioners. In response to Admission No. 4, Petitioner admitted "that Petitioners have records evidencing the fact of any freight rail shipments made by "BNSF, SLWC, or any other carrier from or to Petitioners' or any peron's facilities which originated or terminated on the Line between September 24, 2003, and September 23, 2005." In response to Document Request No. 1, Petitioners claim they have no documentary evidence as to traffic moving on the Line. Accordingly, on at least two occasions, Petitioners have claimed to have in their possession evidence of local traffic movements on the Line, yet in response to this document request, they claim to have none.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Board compel Petitioners to respond to the Interrogatories and Document Requests.

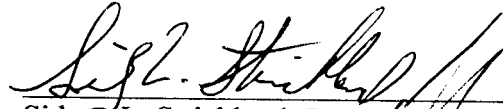
Respectfully Submitted,



Karl Morell
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Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
STILLWATER CENTRAL
RAILROAD, INC.

Dated: January 3, 2006



Sidney L. Strickland, Jr.
Sidney Strickland and
Associates, PLLC
3050 K Street, N.W.,
Suite 101
Washington, DC 20007
(202) 295-4672

Attorney for:
BNSF RAILWAY COMPANY

CERTIFICATE OF SERVICE

BNSF Railway Company and the Stillwater Central Railroad, Inc., ("Applicants")
by and through their counsel, Sidney L. Strickland, Jr., and Karl Morell, respectively,
certify that on January 3, 2006, Applicants served a copy of the foregoing Motion to
Compel Discovery Requests by facsimile transmission and by mailing copies thereof by
first-class mail to Petitioners' counsel, Fritz R. Kahn, Esq.

Karl Morell
Of Counsel
Ball Janik LLP
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1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
STILLWATER CENTRAL
RAILROAD, INC.

Sidney L. Strickland, Jr.
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Attorney for:
BNSF RAILWAY COMPANY

Dated: January 3, 2006

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FACSIMILE TRANSMISSION SHEET

To: Sidney L. Strickland, Jr., Esq.
Fax no.: (202) 672-5399
From: Fritz R. Kahn
Fax No. (202) 331-8330
Date: December 15, 2005
Client: NATI
Number of pages: 9

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December 15, 2005

VIA MAIL AND FAX

Sidney L. Strickland, Jr., Esq.
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Washington, DC 20007

Karl Morell, Esq.
Ball Janick
1455 F Street, NW (#225)
Washington, DC 20005

re: STB Docket No. AB-6 (Sub-No. 430X), BNSF Railway Company--
Abandonment Exemption--In Oklahoma County, OK

STB Docket No. AB-1040X, Stillwater Central Railroad, Inc.--
Abandonment Exemption--In Oklahoma County, OK

Dear Sidney and Karl:

Enclosed is a copy of the Petitioners' response to Applicants' initial discovery requests.
I look forward to receiving Applicants' response to Petitioner's initial discovery requests.

In th meantime, best wishes for a joyous Holiday and happy and healthy 2006.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Hon. David M. Konschnik (202) 565-9002 (w/o enc.)

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. AB-6 (Sub-No. 430X)

BNSF RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN OKLAHOMA COUNTY, OK

STB Docket No. AB-1040X

STILLWATER CENTRAL RAILROAD, INC.
- ABANDONMENT EXEMPTION -
IN OKLAHOMA COUNTY, OK

PETITIONERS' RESPONSE TO
APPLICANTS' INITIAL DISCOVERY REQUESTS

Petitioners, Bio-energy Wellness Center and North American Transportation Institute,
pursuant to 49 C.F.R. 1114.21, et seq., respond to the Applicants' initial discovery requests, as
follows:

INTERROGATORIES

1. On pages 2 of the Petition and Motion, You state that the Line "has been used to
handle local traffic within the past two years." Please define "local traffic" as used in the
referenced sentence and identify all local traffic that was handled on the Line between September
24, 2003, and September 23, 2005.

Local traffic is that traffic which was handled to or from industries,
shippers and/or consignees situated on, or accessed via the Line. Applicants
are in the best position to know which shipments were picked up by them, delivered by

them or were the subject of intraplant switching, but to date, Applicants have not responded to Petitioners' discovery requests seeking that information. Nor have counsel for the Applicants signed and returned the Highly Confidential undertakings permitting Petitioners to make a greater response.

2. On page 2 of the Motion, You state that a protective order in these proceedings is necessary "to protect the confidentiality of shippers on the [L]ine which . . . are sufficiently concerned about retribution not to make their identities made public." Identify the shippers referenced in this assertion.

Counsel for Applicants have not signed and returned the Highly Confidential undertakings permitting Petitioners to make a greater response.

3. For each shipper identified in response to Interrogatory No. 2, identify all communications between Petitioners (including, without limitation, their counsel, agents, representatives or consultants) prior to the filing of the Motion and explain why these shippers are concerned about retribution and are unwilling to make their identities public.

No shipper was identified.

4. Please provide the following information concerning the business of Wellness Center and Institute; location, proximity to the Line, principal lines of business, types of commodities they transport by rail and by any other mode, transportation shipping patterns, including data on any past rail shipments and/or shipments on or over the Line in the past five years (along with commodity, origin/destination information) and the same information provided for shipments by any other transportation mode.

The Wellness Center of 3021 N. Classen Boulevard, Oklahoma City, OK 73106, and the Institute, P. O. Box 6617, Oklahoma City, OK 73153, are organizations situated in Oklahoma City concerned about the proposed abandonment of the Line and the diversion of overhead traffic to the old "belt line" with its many at-grade street crossings. Neither the Wellness Center nor the

Institute is a shipper or consignee which has used rail or motor carrier transportation services.

5. Please describe all present and planned future use by Petitioners or any other persons or entities of rail freight service over the Line.

Neither Petitioner is a shipper or consignee anticipating using rail or motor carrier transportation services. Presumably those industries, shippers and/or consignees situated on, or accessed via, the Line would continue receiving railroad service if the Line were not abandoned.

6. Identify any participation Petitioners (or counsel, agents, representatives, or consultants) have had "separately or jointly" with the I-40 Relocation, including any meetings attended and testimony or documents submitted to a local, State or Federal agency or authority in support of, or in opposition to, the I-40 Relocation.

Petitioners decline to answer the interrogatory on the grounds that it is irrelevant to the issue before the Board, namely, whether Applicants' Verified Notice of Exemption contained false or misleading information, nor would it lead to the disclosure of relevant and, hence, admissible materials.

7. State with specificity what information in BNSF's Notice of Exemption is alleged to be fraudulent and/or misleading and the basis for such claim, including a description of all information known to exist supporting, negating, or relating to Petitioners' claim.

Applicants are in the best position to know which shipments were picked up by them or were the subject of intraplant switching at the industries, shippers and/or consignees situated on, or accessed via the Line. Applicants, however, as yet have not responded to Petitioners' discovery requests seeking that information. Nor have counsel for Applicants signed and returned the Highly Confidential undertaking permitting Petitioners to make a greater response.

DOCUMENT REQUEST

1. Produce all documents that were identified in response to Interrogatory No. 3.

There was none.

2. Produce all documents that were used to reach the conclusions identified in Interrogatory Nos. 1 and 2.

There was none.

3. Produce all documents Petitioners have in their possession custody or control concerning the I-40 Relocation, including without limitation, any documents submitted to any local, State or Federal agency or authority in connection with the I-40 Relocation.

Petitioners decline to respond to the document production request on the grounds that it is irrelevant to the issue before the Board, namely, whether Applicants' Verified Notice of Exemption contained false or misleading information, nor would it lead to the disclosure of relevant and, hence, admissible materials.

4. Please produce all waybills in your possession, custody or control of any traffic which has originated or terminated on the Line at any time.

Unlike Applicants, Petitioners have none.

5. Please produce all waybills in your possession, custody or control of any traffic which has traversed (but not originated or terminated) the Line at any time.

Unlike Applicants, Petitioners have none.

6. Please produce all information in your possession, custody, or control which supports or negates Petitioners' allegation that (1) BNSF's Notice of Exemption in this proceeding contained fraudulent or misleading information; and/or the Line has been used for Local traffic (defined for purposes of this request No. 6, as traffic which either originates or terminates on the line) in the preceding two years prior to BNSF's filing of its Notice of Exemption.

See responses to Interrogatories Nos. 1 and 7.

7. Please produce copies of all correspondence, records, and electronic data in

Petitioners' possession, custody, or control, pertaining to rail freight shipments moving from, to or via the Rail Line in the past five years.

Unlike Applicants, Petitioners have none.

8. Please produce copies of all correspondence (including e-mails) in your possession, custody or control between BNSF or SLWC and Petitioner or any other party concerning the Line, rail service generally, or the I-40 relocation.

Petitioners have had no correspondence with BNSF, SLWC or any other party concerning the Line or rail service generally. Any correspondence they may have had concerning the I-40 relocation is irrelevant to the issue before the Board, namely, whether Applicants' Verified Notice of Exemption contained false or misleading information, nor would such correspondence lead to the disclosure of relevant and, hence, admissible materials.

9. Please produce copies of all information described in Interrogatory No. 8.

There is no Interrogatory No. 8.

REQUESTS FOR ADMISSIONS

1. Deny that Petitioners can identify no industry, shipper or consignee situated on, or accessed via, the Line between September 24, 2003, and September 23, 2005.

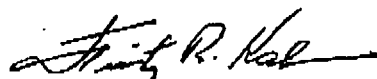
2. Deny that Petitioners can identify no service that was rendered by BNSF or SLWC between September 24, 2003, and September 23, 2005, on the Line.

3. Deny that no shipper which made overhead or local shipments between September 24, 2003, and September 23, 2005, via SLWC is concerned about retribution.

4. Admit that Petitioners have records evidencing the fact of any freight rail shipments made by BNSF, SLWC, or any other carrier from or to Petitioners' or any person's facilities which originated or terminated on the Line between September 24, 2003, and September 23,

2005.

Dated at Washington, DC, this 15th day of December 2005.



Fritz R. Kahn

Fritz R. Kahn, P.C.

1920 N Street, NW (8th fl.)


Washington, DC 20036-1601

Tel.: (202) 263-4152

VERIFICATION

I, Tom Elmore, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Petitioners' Response to Applicants' Initial Discovery Requests and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of North American Transportation Institute. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Oklahoma City, Oklahoma this 14th Day of December, 2005.



Tom Elmore

VERIFICATION

I, Michael Richards, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Petitioners' Response to Applicants' Initial Discovery Requests and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Bio-Energy Wellness Center. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Oklahoma City, OK, this 14 day of December 2005.


Michael Richards